No. 140

JUN 21 1950
CHARLES ELMORE CROP
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Supreme Court of the United States

OCTOBER TERM, 1949.

BERTHA JONES, an Incompetent, by BESSIE RUTH JONES, her Guardian; TAYLOR JACKSON; BERNICE L. JACKSON; and T. A. NICHOLSON,
Petitioners,
VERSUS
ALICE C. MEDLOCK; J. D. SHIPMAN and ELLA SHIPMAN; OKLAHOMA CITY FEDERAL SAVINGS AND LOAN ASSOCIATION; and HARLAN DEUPREE,
Respondents.

No.....

IRA D. HALL and RUBY M. HALL,
Petitioners,
VERSUS
JOHN C. HUBBARD; E. G. SCHWARTZ and EMMA A. SCHWARTZ; and BETTY F. ALBERT, now BETTY F. ROWE,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND NOTICE

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Of its own motion, the Court of Appeals decided these cases together and delivered a single opinion; therefore in this undertaking we must treat them as consolidated.

Petitioners pray that a Writ of Certiorari issue to review the judgments of the Circuit Court of Appeals for the Tenth Circuit, entered on February 21, 1950, affirming the judgments of the United States District Court for the Western District of Oklahoma, entered June 8, 1949.

OPINION BELOW

The opinion of the court below, filed February 21, 1950, and not yet reported is for the convenience of the Court, here printed:

"Before HUXMAN, MURRAH, and PICKETT, Circuit Judges.

HUXMAN, Circuit Judge.

"While separate appeals were taken in these two cases, they present identical questions. They were argued together and will be disposed of in a single opinion. They grow out of agreements executed between all of the owners of the real estate of the North Half of Block 8, Jordan Place Addition, and of Block 13, in Oak Park Addition, to Oklahoma City. The contracts between all the owners of such real estate declared their purpose to be the maintenance of property values for the mutual benefit of all. The two contracts were substantially the same in all material respects and the pertinent part of only one will be set out. To effectuate such purpose, the parties covenanted and agreed with each other that none of them or their successors would ever sell their property in the block to any person of the Negro or African race. The agreement provided:

" '* * * that any deed * * * made in violation of said contract shall be void and may be set aside on petition

of one or more of the parties hereto; and when such conveyance is set aside by decree of the court, all costs and all expenses of such proceeding shall be taxed against the grantor or grantors and shall be declared * * * to constitute a lien against the real property so wrongfully deeded * * * and such lien may be enforced in such manner as the Court may order.'

"In Number 4000, on September 8, 1944, E. G. Schwartz and Emma Schwartz, husband and wife, conveyed three lots in the North half of Block 8 to Ira D. Hall and Ruby M. Hall, members of the Negro race, by warrenty deed. John C. Hubbard, an owner of property in the North Half of Block 8, thereupon brought an action in the District Court of Oklahoma County to enforce the agreement. He prayed judgment cancelling and setting aside the deed made to the Halls by Schwartz; that the Halls be enjoined from further occupancy or ownership of the property; and for costs and attorneys' fees. Other relief was prayed for but the above sets out all that is necessary to dispose of the question presented by this appeal.

"Schwartz undertook the defense of the action, employed attorneys, and filed answers on behalf of himself and the Halls. The answers admitted the execution of the contract but alleged that the same was no longer of value in that since the execution thereof the property involved in the contract had changed by reason of having become surrounded by Negro property owners so that it had become impractical to carry out the original intention and purposes of the contract; that the restrictive provisions of the contract had ceased to have force and effect and were no longer of value and asked that the restrictive contract be declared invalid and cancelled.

"The trial court rendered judgment for the plaintiff enforcing the contract, cancelled the conveyance from Schwartz to the Halls, and revested the title in the grantors, the Schwartzes, perpetually restrained and enjoined them from selling, leasing, or disposing of any of the property covered by the contract to Negros, ordered the Halls to vacate the premises they occupied, enjoined them from any further occupancy in the area, and provided for further appropriate action to compel compliance with the Court's judgment. An appeal was taken to the Supreme Court of the State of Oklahoma and the judgment of the trial court was affirmed. See *Schwartz* v. *Hubbard*, 177 P. (2d) 117.

"In Number 3970, a similar action was instituted in the State Court by Alice C. Medlock, an owner of lots in the North Half of Block 9, against the appellants, Bertha Jones, Taylor Jackson, Bernice L. Jackson, and J. D. Shipman and Ella Shipman, W. B. Eaton and Maud Eaton their grantors. Others were made parties to that action but since they are not involved in this appeal, no reference is made to them. The allegations of the complaint and the prayer for relief, so far as material to the question here, were substantially the same as outlined in Number 4000. A judgment cancelling the deeds, revesting the title in the grantors and enjoining them from selling the property to members of the Negro race was entered. An appeal was taken from this judgment to the Supreme Court of Oklahoma. See *Shipman* v. *Medlock*, 184 P. (2d) 764, where the judgment of the trial court was upheld upon the authority of *Schwartz* v. *Hubbard*, *supra*.

"Writs of Assistance were issued in both cases to evict appellants from the premises. Various steps were taken in the State Court actions by appellants in resisting such writs. Since none of these steps are mate-

rial to the questions in issue in this appeal, no further reference will be made to them.

"Thereafter these two actions were instituted in the District Court of the United States for the Western District of Oklahoma. The action in Number 3970 was instituted by Bertha Jones, Taylor Jackson and Bernice L. Jackson, against Alice C. Medlock, the plaintiff in the State Court action, and against J. D. Shipman and Ella Shipman, his wife, grantors in the deed to appellants. Others who have no interest in the appeal were also joined as defendants. In Number 4000, the action was instituted by appellants, Ira D. Hall and Ruby M. Hall, against John C. Hubbard, plaintiff in the State Court action, and E. G. Schwartz and Emma Schwartz, grantors in the deed to the Halls, and other defendants not necessary to this appeal. Basically the complaints in the two cases are substantially the same and the material allegations thereof, so far as involved in this appeal, may be summarized as follows:

"The complaints, in substance, alleged that the actions were civil actions in which the amount in controversy exceeded, exclusive of costs and interest, the sum of $3,000.00; that they arose under the Constitution and laws of the United States, and also under Section 1343 of the Code, Subdivision (3), they being civil actions to redress the deprivation under color of any state law, statute, ordinance, regulation, custom or usage, of civil rights, privileges and immunities secured by the Constitution of the United States and the Act of Congress providing for equal rights of citizens; and also under Section 2201 and 2202 of the Code.

"The complaints recited the deeds from the respective grantors to appellants, all negroes, the consideration therefor and payments made thereunder, the restrictive agreement, the actions instituted in the State Court, and the results thereof.

"It was alleged that the defenses interposed in said causes were that the condition of the property and the surrounding properties had so changed since the execution of the restrictive agreement that the same was no longer effective nor capable of serving the purposes thereof and was impractical and impossible of enforcement; that prior to the decision by the Supreme Court and the mandate filed in the office of the Court Clerk of Oklahoma County, the defendants had intended, in good faith, to endeavor to protect and secure to the appellants their right and title to the property conveyed to them by the deeds, but as shown by the record, since the decision by the Supreme Court, the defendants in each case had conspired and acted together to secure to themselves not only the possession and title to said property, but also to compel the appellants to pay the entire judgments in the State actions; that the judgments and service of process issued out of the District Court of Oklahoma County were actions of the State and that said judgments were all void and were nullities, for the reason that they violated the provisions of Section 1, of the Fourteenth Amendment of the Constitution of the United States; that said decrees and judgments deprived the appellants of their property without due process of law and denied them equal protection of the laws; that they were entitled to a declaratory judgment finding and declaring the rights and relations of all parties, their interest in the property, as well as their rights against Alice C. Medlock and John C. Hubbard, and for an order restraining the plaintiffs in the State action from further proceedings therein until this declaration might be had. No temporary restraining order was issued.

"In both cases, the defendants filed motions to dismiss the cause of action on the ground that the complaints failed to state a cause of action, and on the

further ground that the court lacked jurisdiction. The motions were sustained and these appeals followed.

"These appeals are predicated on the ground that the judgments in the Oklahoma State Court in the case of *Hubbard* v. *Schwartz et al.*, and *Medlock* v. *Shipman et al.*, were void. Thus, in appellants' brief in Number 3970, it is stated: 'The matters to be considered and determined by this Court will depend largely upon the Court's conclusion as to the validity of the judgment of the District Court of Oklahoma County, Oklahoma. * * * .'

"It is obvious from a reading of the opinions of the Supreme Court of Oklahoma in the two State cases, as well as from appellants' allegations in their complaints in these actions, that the State Trial Court had jurisdiction of the parties and the subject matter of the action. In the State Court actions, the appellants joined in the request that the trial court adjudicate the legality of the restrictive agreement before it in those actions by seeking an adjudication cancelling the agreement. This they failed to obtain. In these actions, they concede that the grantors acted in good faith in defending those actions before the trial court, as well as the Supreme Court, and that the alleged conspiracies to deprive them of their property occurred only after the decisions by the State Trial Court and in the Supreme Court. Since the State Court had jurisdiction of the subject matter and the parties to the action, it is obvious that its judgments were not void. The most that can be said is that such judgments were erroneous.

"Furthermore, the Federal question now urged for first time was not an issue in the State cases. As pointed out, the entire defense in those cases was that the changed conditions made it inequitable to further enforce the restrictive agreement and required its cancellation. Obviously the State Court judgments could

not be void because the court did not of its own volition raise and decide an issue not presented by the parties.

"It is well settled that a Federal court lacks jurisdiction to vacate or set aside judgments or decrees of state courts. In *Moffett* v. *Robbins*, 81 Fed. (2d) 431, 435, this court said:

" 'It is equally well settled by the decisions of this court and others that a United States court cannot vacate a judgment or decree of a state court, nor mandate that court to do so.'

"Affirmed." (Pages 48 to 53 of the original transcript filed herewith.)

BASIS OF JURISDICTION

The jurisdiction of this Court rests upon Subsection I of Section 1254, Title 28, USCA, and the Constitution and Statutes of the United States obligating the Court of last resort to enforce the Fourteenth Amendment.

QUESTIONS PRESENTED

The fundamental questions presented in this petition are:

1. Can a state court enforce a restriction violative of the Fourteenth Amendment to the Constitution of the United States to deprive a Negro of his property, and is a judgment of such court attempting so to do valid or void?

2. In suits in the Federal Courts for declaratory judgments, what relief, if any, are Negroes so deprived entitled to receive?

SUMMARY STATEMENT

The essential facts are contained in the opinion printed before.

The United States District Court for the Western District of Oklahoma declined jurisdiction, and the Court of Appeals affirmed its orders of dismissal, predicating that conclusion upon finality and binding effect attributed to the judgments in the state courts; all as more fully appears from the opinion printed before.

REASON FOR GRANTING THE PETITION

By error, oversight and inadvertence the learned judges of the United States Court of Appeals for the Tenth Circuit have overlooked the significance of the opinions recently rendered by this Honorable Court vitalizing the Fourteenth Amendment. Therefore, a judgment rendered by a state court in Oklahoma depriving a person of property in obedience to a restriction created by contract, solely because that person is a Negro, is treated as valid and permitted to operate as a bar to a suit commenced in a federal court to cure such deprivation. So an intolerable contradiction exists between Oklahoma jurisprudence and that obtaining in other states of the Union; and, under the circumstances, this Honorable Court should act to alert the trial courts, state and federal, to their duty in such matters, and, at the same time, accord these petitioners justice.

Duty compels me to say, reluctantly and respectfully, that the learned judges of the Court of Appeals missed entirely, and wholly failed to grasp, the purposes of petitioners' suits. The jurisdiction of the Federal Court was not invoked to vacate, or order vacated, judgments of the

State Court, but these Negroes sought declaratory judgments to fix and establish their rights to properties of which they had been deprived by the Judicial Department of the State of Oklahoma in violation of the Fourteenth Amendment. In the quoted opinion, their pleadings and their prayers alike escaped the equation.

Wherefore, it is respectfully submitted that this Petition for Writ of Certiorari to review the judgments of the United States Court of Appeals for the Tenth Circuit should be granted.

SID WHITE,
309 American National Building,
Oklahoma City, Oklahoma,

Attorney for Petitioners.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

It is not the restriction agreement of which petitioners complain, but of the act of the State of Oklahoma, through its Judicial Department taking from them their properties in accordance with the terms of said contract and because of their color and race.

In *Shelly et ux.* v. *Kramer et ux.*, and *McGhee et ux.* v. *Sipes et al.*, decided May 3, 1948, reported in Volume 68 of the Supreme Court Reporter and to be published in 68 Sup. Ct. 836, this Honorable Court has declared such acts upon the part of the state to be void and has recognized its responsibility to correct and cure the same.

This was no novation in the law, for in *Buchanan* v. *Warley* (1917), 245 U. S. 60, 38 Sup. Ct. 16, 62 L. Ed. 149, this Court committed itself to the same doctrine.

In *City of Norman et al.* v. *Van Camp et al.*, 209 Pac. 925, and in Syllabi 3, the Supreme Court of Oklahoma had this to say:

> "Where a judgment or any part thereof clearly violates the plain provisions of the constitution or statutes, such judgment or the part thereof that is in direct conflict with the Constitution or statutes is to that extent void and cannot be enforced."

It is academic and fundamental that the courts cannot evade the supreme law of the land, the Constitution, under the guise of interpretation or construction. I agree that, where jurisdiction is dependent upon facts, the courts of *nisi prius* may decide that question, each for itself; but where jurisdiction in any event is granted or prohibited by

a plain provision of law, then each assumption of authority must be tested by the law and stand or fall accordingly. This seems to be well settled in most jurisdictions.

Mr. Black, in his work on Judgments, reminds us that courts do not function *sua sponte* and unbridled, but only in cases where their jurisdiction is rightfully invoked, and then in obedience to fundamental law. An example of this is his discussion of the Essentials of Jurisdiction in Section 242 of Volume I (2d Edition). The right to liberty and to hold property are alike sacred, and the author's discussion of Habeas Corpus in Section 257 of the same volume is persuasive here.

Though I have never been a believer in social equality, yet to me this business of stripping a Negro of his property acquired from a white man, who broke faith with his own color to make the sale, is an intolerable injustice.

If the Writ be granted then, with the Court's permission, I shall endeavor to establish the right of the Negroes to their properties together with rents and profits wrongfully appropriated and withheld.

Very respectfully,

SID WHITE,
309 American National Building,
Oklahoma City, Oklahoma,
Attorney for Petitioners.

NOTICE

To W. R. Withington and Harlan Deupree, Counsel for Respondents:

You are hereby notified that on or before the 21st day of June, 1950, the petitioners will file in the Supreme Court of the United States a Petition for Review on Writ of Certiorari of the decision of the United States Court of Appeals in the cases in that Court in which the petitioners are appellants and the respondents are appellees, being Causes No. 3970 and No. 4000 on the Docket of said Court.

Copies of said petition, of the printed record in said causes and of the brief in support of said petition, are annexed hereto and are herewith served upon you.

Dated this 16th day of June, 1950.

SID WHITE,
309 American National Building,
Oklahoma City, Oklahoma,

Attorney for Petitioners.

Service of the foregoing notice and of copies of petition, brief and record therein specified, is hereby acknowledged.

Dated this 16th day of June, 1950.

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Attorneys for Respondents.